IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GARY MISNIK 726 Perkins Ln.	:
Edgewater Park, NJ 08010	: CIVIL ACTION
Dagewater Fark, 140 00010	·
Plaintiff,	: No
V.	: :
XENIA BENSALEM, INC.	: :
d/b/a Meineke 2658 Bristol Pike	: JURY TRIAL DEMANDED
Bensalem, PA 19020	•
and	•
XENIA FAIRLESS HILLS, INC.	•
d/b/a Meineke	· :
125 Route 1	:
Fairless Hills, PA 19030	:
and	:
XENIA FOXCHASE, INC.	:
d/b/a Meineke	:
8051 Oxford Ave.	:
Philadelphia, PA 19111	:
and	:
XENIA SOUTHAMPTON, INC.	:
d/b/a Meineke	:
58 2 nd St. Pike	:
Southampton, PA 18966	:
Defendants.	

CIVIL ACTION COMPLAINT

Plaintiff, by and through his undersigned counsel, hereby avers as follows:

INTRODUCTION

1. This action has been initiated by Gary Misnik (*hereinafter* referred to as "Plaintiff," unless indicated otherwise) against Xenia Bensalem, Inc., Xenia Fairless Hills, Inc., Xenia FoxChase, Inc., and Xenia Southampton, Inc. (*hereinafter* collectively referred to as

"Defendant" unless indicated otherwise) for violations of the Americans with Disabilities Act ("ADA" -42 USC §§ 12101 *et. seq.*) and the Pennsylvania Human Relations Act ("PHRA"). As a direct consequence of Defendant's unlawful actions, Plaintiff seeks damages as set forth herein.

JURISDICTION AND VENUE

- 2. This Court, in accordance with 28 U.S.C. § 1331, has jurisdiction over Plaintiff's claims because this civil action arises under laws of the United States.
- 3. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in <u>International Shoe Co. v. Washington</u>, 326 U.S. 310 (1945) and its progeny.
- 4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and in addition, Defendant is deemed to reside where it is subject to personal jurisdiction, rendering Defendant a resident of the Eastern District of Pennsylvania.
- 5. Plaintiff is proceeding herein under the ADA and has properly exhausted his administrative remedies with respect to such claims by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant lawsuit within ninety (90) days of receiving a notice of dismissal and/or right to sue letter from the EEOC.

¹ Plaintiff will move to amend his instant lawsuit to include a claim under the PHRA once his administrative remedies are fully exhausted with the Pennsylvania Human Relations Commission. Any claims under the PHRA though would mirror the instant ADA claims identically.

PARTIES

- 6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
 - 7. Plaintiff is an adult individual, with an address as set forth in the caption.
- 8. Defendants Xenia Bensalem, Inc., Xenia Fairless Hills, Inc., Xenia FoxChase, Inc., and Xenia Southampton, Inc. are all car maintenance centers owned and operated by Divya Andhavarapu (hereinafter "Andhavarapu"), doing business as "Meineke"
- 9. While Defendants Xenia Bensalem, Inc., Xenia Fairless Hills, Inc., Xenia FoxChase, Inc., and Xenia Southampton, Inc. are all listed as separate entities with the Secretary of State, they may be treated as a single and/or joint employer of Plaintiff for purposes of the instant action because they are sufficiently interrelated and integrated in their activities, labor relations, financial controls, operations, ownership and management. For example:
 - i. All entities are owned and/or operated by Andhavarapu;
 - ii. All entities are managed by Lee (last name unknown);
 - iii. While Plaintiff was assigned to oversee the Bensalem location (under Lee) after Andhavarapu purchased said location from the predecessor company, Essex Automotive, employees from other locations would be asked to assist Plaintiff at his location. On other occasions, managers/employees from other locations would jointly order parts with Plaintiff's location and also call Plaintiff's location to ask questions and/or seek other forms of assistance;
 - iv. Upon information and belief, Andhavarapu holds joint meetings with managers from each location to discuss business matters. In fact, Plaintiff

was instructed prior to his termination to attend a manager meeting at the Southampton location on a specific date. However, prior to being able to attend the meeting, Plaintiff was terminated. Plaintiff was later informed by another manager that this meeting did take place and Plaintiff's separation was discussed amongst all managers; and

- v. All entities advertise on the same website and do business under the name "Meineke;" and
- vi. All entities were created with Pennsylvania's Secretary of State on April 18, 2019 (with the exception of Xenia of Southampton, Inc which was created on April 19, 2019).
- 10. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

FACTUAL BACKGROUND

- 11. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 12. Plaintiff was employed with Defendant's predecessor, Essex Automotive, for approximately one (1) year, working primarily as a manager (although he still performed some mechanic work).
- 13. In or about May of 2019, Defendant's owner, Andhavarapu, purchased from Essex Automotive the Meineke location at which Plaintiff worked in Bensalem, PA, as well as 3 other Meineke locations located in Philadelphia, Fairless Hills, and Southampton, PA.

- 14. Therefore, on or about May 21, 2019, Plaintiff became a full-time employee of Defendant and again was assigned to work as the service manager/general manager of Defendant's Bensalem, PA location (albeit still performing some mechanic work).
- 15. Plaintiff remained employed with Defendant or approximately one (1) week until he was unlawfully terminated by Defendant in or about late May of 2019.
- 16. During his employment with Defendant, Plaintiff was supervised by Manager, Lee (last name unknown hereinafter "Lee") and Andhavarapu.
- 17. Upon information and belief, Lee managed all four locations owned by Andhavarapu (*i.e.* Defendants Xenia Bensalem, Inc., Xenia Fairless Hills, Inc., Xenia FoxChase, Inc., and Xenia Southampton, Inc.) during Plaintiff's employment with Defendant.
- 18. Plaintiff has and continues to suffer from disabilities related to his hip and as a result, is (at times) limited in his ability to perform some daily life activities, including but not limited to walking, running, bending, and performing manual tasks.
- 19. During his brief period of employment with Defendant, Plaintiff was questioned by Defendant's management, including but not limited to his new Manager, Lee and Andhavarapu about his noticeable limp and asked what was wrong with his leg.
- 20. In response to Lee's and Andhavarapu's inquiry regarding his health condition, Plaintiff informed Defendant's management that he suffers from disabilities related to his hip. Plaintiff also discussed with Defendant's management the possibility of needing medical accommodations in the future (albeit not the near future).
- 21. For example, Plaintiff informed Defendant's management that he would eventually need to undergo a hip replacement surgery and thus need time off from work related to same.

- 22. After apprising Defendant's management of his aforesaid health conditions and likelihood of having to undergo surgery to get his hip replaced, Plaintiff was brought into a meeting and informed that he was being terminated for completely pretextual reasons.
- 23. Among the ridiculous reasons given for Plaintiff's termination, was that he would be out of work for a while to get his hip replaced.
- 24. Defendant's management also stated at that time of Plaintiff's termination that he was probably only working at Defendant in order to get insurance for and until his hip replacement surgery.
- 25. While Defendant's management informed Plaintiff that he was being terminated from his employment in May of 2019, Defendant later changed the reason for Plaintiff's separation after he filed a Charge of Discrimination with the EEOC and alleged that Plaintiff actually quit his employment with Defendant which is completely false.
- 26. Based on the foregoing, Plaintiff believes and avers that he was terminated from his employment with Defendant in violation of the ADA.

First Cause of Action <u>Violations of the Americans with Disabilities Act, as amended ("ADA")</u> (Actual/Perceived/Record of Disability Discrimination & Retaliation) -Against All Defendants-

- 27. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 28. Plaintiff suffered from qualifying health conditions under the ADA (as amended), which (at times) affected his ability to perform some daily life activities as discussed *supra*.
- 29. Plaintiff apprised Defendant's management of his aforesaid health conditions and the possibility of needing a reasonable medical accommodation in the future.

- 30. Plaintiff was terminated from his employment (1) shortly after apprising Defendant's management of his disabilities; (2) in close proximity to when he discussed with Defendant's management the possibility of needing reasonable medical accommodations in the future; and (3) for completely pretextual reasons including reasons directly associated with his aforesaid health conditions.
- 31. Plaintiff believes and therefore avers that he was terminated from Defendant because of: (1) his known and/or perceived disabilities; (2) his record of impairment; and/or (3) because he discussed with Defendant's management the possibility of needing accommodations in the future.
 - 32. These actions as aforesaid constitute violations of the ADA, as amended.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

- A. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority.
- B. Plaintiff is to be awarded punitive damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;
- C. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate (including but not limited to damages for emotional distress / pain and suffering);

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By:

Ari R. Karpf, Esq. 3331 Street Road

Two Greenwood Square, Suite 128

Bensalem, PA 19020

(215) 639-0801

Dated: May 26, 2020

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Gary Misn	ik	:	CIVIL ACTION	
v.		: :		
Xenia Bensalem, Inc. d/b/a Mei	neke, et al.	;	NO.	
plaintiff shall complete a Ca filing the complaint and serv side of this form.) In the designation, that defendant	se Management a copy on all co	nt Track De defendants. fendant doe irst appeara anagement	ay Reduction Plan of this court, counse signation Form in all civil cases at the tim (See § 1:03 of the plan set forth on the reves not agree with the plaintiff regarding nce, submit to the clerk of court and serv Track Designation Form specifying the training signed.	ne or erse saic
SELECT ONE OF THE F	OLLOWING (CASE MAI	NAGEMENT TRACKS:	
(a) Habeas Corpus - Cases	brought under	28 U.S.C. §	2241 through § 2255.	()
(b) Social Security - Cases and Human Services der	requesting revinying plaintiff S	ew of a dec Social Secu	ision of the Secretary of Health rity Benefits.	()
(c) Arbitration - Cases requ	ired to be desig	gnated for a	rbitration under Local Civil Rule 53.2.	()
(d) Asbestos – Cases involvexposure to asbestos.	ing claims for	personal inj	ury or property damage from	()
commonly referred to as	complex and t	that need sp	racks (a) through (d) that are ecial or intense management by iled explanation of special	
management cases.)			•	()
(f) Standard Management -	Cases that do:	not fall into	any one of the other tracks.	(X)
		}		
5/26/2020			Plaintiff	
Date	Attorney	-at-law	Attorney for	
(215) 639-0801	(215) 639-	4970	akarpf@karpf-law.com	·
Tel ephone	FAX Nu	mber	E-Mail Address	

(Civ. 660) 10/02

Case 2:20-cv-02468-GN/TEID9994999151RIEiled 05/27/20 Page 10 of 11 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 726 Perkins Lane, Edgewater Park, NJ 08010)		
Address of Defendant: 2658 Bristol Pk, Bensalem PA 19020; 125 Rte 1, Fairles	s Hills PA 19030; 8051 Oxford A	ve, Phila PA 19111; 58 2	nd St Pk, Southampton PA 1896
Place of Accident, Incident or Transaction: <u>Defendants place of bus</u>	siness		
RELATED CASE, IF ANY:			
Case Number: Judge:		Date Terminated:	
Civil cases are deemed related when Yes is answered to any of the following	questions:	_	
1. Is this case related to property included in an earlier numbered suit pend previously terminated action in this court?	ing or within one year	Yes	No X
2. Does this case involve the same issue of fact or grow out of the same trapending or within one year previously terminated action in this court?	nsaction as a prior suit	Yes	No X
3. Does this case involve the validity or infringement of a patent already numbered case pending or within one year previously terminated action		Yes	No X
4. Is this case a second or successive habeas corpus, social security appeal, case filed by the same individual?	or pro se civil rights	Yes	No X
I certify that, to my knowledge, the within case is / is not related this court except as noted above.	to any case now pending or wi	ithin one year previous	ly terminated action in
DATE: 5/26/2020			4 / 91538
Attorney-at-Lo	aw / Pro Se Plaintiff	Attorney I.	D. # (if applicable)
CIVIL: (Place a √ in one category only)			
T. J. O. C. C.			
A. Federal Question Cases:	B. Diversity Jurisdiction Co	ases:	
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Case 2:20-cv-02468-CF Document 1 Filed 05/27/20 Page 11 of 11 IL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as

provided by local rules of court. purpose of initiating the civil do	This form, approved by the ocket sheet. (SEE INSTRUCT	e Judicial Conference of TIONS ON NEXT PAGE OF	the United States in September <i>THIS FORM.</i>)	1974, is required for the use of the	he Clerk of Court for the		
I. (a) PLAINTIFFS			DEFENDAN'	TS	_		
MISNIK, GARY			XENIA BENS.	XENIA BENSALEM, INC. D/B/A MEINEKE, ET AL .			
(b) County of Residence o	f First Listed Plaintiff KCEPT IN U.S. PLAINTIFF CA	Burlington SES)		nce of First Listed Defendant (IN U.S. PLAINTIFF CASES O			
				CONDEMNATION CASES, USE T ACT OF LAND INVOLVED.	HE LOCATION OF		
•	Address, and Telephone Number		Attorneys (If Knov	vn)			
Karpf, Karpf & Cerutti, I Suite 128, Bensalem, PA			•				
II. BASIS OF JURISDI	CTION (Place an "X" in O	ne Box Only)	III. CITIZENSHIP OF (For Diversity Cases Onl		(Place an "X" in One Box for Plaintif and One Box for Defendant)		
1 U.S. Government Plaintiff	X 3 Federal Question (U.S. Government)	Not a Party)	Citizen of This State	PTF DEF 1 1 Incorporated or Print of Business In 7			
2 U.S. Government Defendant	4 Diversity (Indicate Citizenshi	p of Parties in Item III)	Citizen of Another State	2 2 Incorporated and Proof Business In			
			Citizen or Subject of a Foreign Country	3 3 Foreign Nation	6 6		
IV. NATURE OF SUIT		ly) PRTS	FORFEITURE/PENALT		of Suit Code Descriptions. OTHER STATUTES		
□ 110 Insurance □ 120 Marine □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPER* 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage Product Liability PRISONER PETITION Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 535 Death Penalty Other: 540 Mandamus & Othe 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	of Property 21 USC 88 George Ground Control of Property 21 USC 88 TY LABOR To Tabor Standards Act To T20 Labor/Management Relations Act Tealitions Tealitions Tealitions Teality and Medical Leave Act Teality Act Teality Act IMMIGRATION The Miles of Property 21 USC 88 The Miles of Pro	28 USC 157 PROPERTY RIGHTS 3 820 Copyrights 3 830 Patent 3 835 Patent - Abbreviated New Drug Application 3 840 Trademark SOCIAL SECURITY 3 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609	375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 896 Arbitration 999 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes		
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VI. CAUSE OF ACTIO	ADA (42USC12101)	•	e filing (Do not cite jurisdictional s	statutes unless diversity):			
VII DECHIECTED DI	Violations of the ADA	A and PA Human Relation		CHECV VEC1-	y if demanded in complaint:		
VII. REQUESTED IN COMPLAINT:	UNDER RULE 2	IS A CLASS ACTION 3, F.R.Cv.P.	DEMAND \$	JURY DEMAND			
VIII. RELATED CASE IF ANY	(See instructions):	JUDGE	_	DOCKET NUMBER			
DATE 5/26/2020		SIGNATURE OF AT	ORNEY OF RECORD				
FOR OFFICE USE ONLY	d						

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AMOUNT

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APPLYING IFP

JUDGE

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MAG. JUDGE